

The Draft Law: An Approach to Reform

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The war in Vietnam has caused differences of opinion within the Catholic community no less than in other American communities. Some Bishops have stated their moral opposition to the war while others have preached their loyal support. Priests have encouraged young men to join-up, but priests have also received draft cards from dissenters. Dissenters and loyalists have increased the intensity of their commitments. Peace marches counteract loyalty parades. But amid the swirl of emotional chants and slogans an issue beyond Vietnam, of importance to all Americans is liable to be lost—the draft law: is it just or not? The center of the issue is the law's provision for conscientious objectors. That issue affects the Catholic conscience more than people think.

Beginning in the Colonial period, individual colonies settled the conflicts which persons of certain faiths had by the call to arms. This was changed slightly when the Draft Law of 1864, while still accepting the state pattern of exempting conscientious objectors on religious grounds assumed the ultimate control. They insisted, however, that exemptions be granted to members of religious denominations opposed to bearing arms and who were prohibited from doing so by the articles of faith of their denominations. This administrative procedure was continued in 1917 when the draft law of that year exempted conscientious objectors who were affiliated with well recog-

nized sects whose creed prohibited its members to participate in war in any form.¹

In 1940 the "Selective Service and Training Act" broadened the exemption afforded in the 1917 act by making it unnecessary to belong to a pacifist religious sect as long as the claimants' personal opposition to war was based on "religious training and belief". The Congress recognized that membership in a church was not a prerequisite for being religious. Nevertheless, this whole shifting of the test for exemption from membership in a recognized "peace" church to one's individual belief continued the Congress' historic practice of exempting from armed service those who believed that they owed an obligation, superior to that due the state, of not participating in war in any form.

In 1948 Congress defined "religious training and belief" as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but not including essentially political, sociological or philosophical views or a merely personal moral code."² Personal objections to this definition were bound to occur and did. Three of these dissents to the definition reached the Supreme Court in 1965. In the famous Seeger decision the Court clarified the meaning of "religious training and belief." The Court thought that the Congress intended to embrace all religions while excluding essentially, political, sociological or philosophical views. The Court concluded:

We believe that under this construction, the test of belief "in relation to a Supreme Being" is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders we cannot say that one is "in relation to a Supreme Being" and the other is not.³

This view, the Court concluded, conforms to the ever broadening understanding of the modern religious community. They illustrated this understanding by quoting from Paul Tillich, J.A.T. Robinson and the Second Vatican Council.

On July 1, 1967 a new draft law was passed and will be in effect until July 1, 1971. Except for the revisions concerning belief in relation to a Supreme Being suggested by the Supreme Court's decision in the Seeger case, the present law is essentially the same draft system adopted by the Congress in 1940.

There is certainly no difficulty for Catholics with the Court's

broader view of religious belief and the extension of the objector exemption to applicants of sincere and meaningful belief. The Vatican Council's teachings did much to enhance the role of Catholics living in a pluralistic society and increased our respect for the dignity of conscience. The Council also increased Catholic respect for conscientious objectors when it said: "It seems right that laws make humane provisions for the case of those who for reasons of conscience refuse to bear arms, provided however that they accept some other form of service to the human community."⁴ With these words the Council settled the old doubt as to whether or not a Catholic citizen could dissent with civil authority and conscientiously object to war.⁵

The difficulty is that the law exempts only pacifists. There are few pacifists in the Catholic community since the teaching of the Church, reiterated by the Council and the Pope, excludes absolute pacifism as a realistic approach to war. But there are many Catholics who object to a particular war, e.g., the war in Vietnam. Their convictions are reached by deep moral decisions inspired by faith and the traditional teaching that in some circumstances force is not only justifiable, but virtuous. They are not opposed to all war. Some wars for them are justifiable and would compel their participation. To be exempt, however, one must prove that he is opposed to *all* war. The draft law assumes that conscientious belief removes a man from all fields of force rather than aiding his judgment on the rightness or wrongness of a particular war.

Consider the Council's plea for more peaceful means to settling human conflicts, and its recognition of legitimate objection as well as its strong emphasis on the dignity and freedom of the human conscience. Consider too the strong just war tradition in Catholic theology. Consider, furthermore, that a theologian no less than John Courtney Murray was reported to have said that on moral grounds selective conscientious objection was unassailable. With these in mind the conflict between the Catholic conscience and the present draft law is quite clear. Catholics propose legitimate moral arguments when they join with others in protesting the equity of the draft law on the matter of selective conscientious objection. But that hardly settles the matter.

Prior to the Congress' passage of the new draft law, the "National Advisory Commission on Selective Service" reported to the President on selective conscientious objection and on other matters related to the draft. The majority of the commission members opposed selective objection. Two members (presumably the late John Courtney Murray

and Kingman Brewster, Jr.) proffered arguments in favor of granting exemptions to objectors to particular wars.

The minority opinion argued that granting the exemption to absolute pacifists alone awarded a privileged position to a sectarian belief which by no means represents a moral consensus of the American people. Most American Christians, it was stated, did not believe that all uses of military force are inherently immoral. Finally, the argument ran, although legitimate authority has the prerogative to decide when to declare war, the citizen is still personally responsible for his own moral judgments on matters of public policy. The second minority opinion urged public recognition of the moral validity of conscientious objection to particular wars and with the first proposal wished to see the requirement of alternative service to continue, but with added rigid demands for testing the objector's sincerity.⁶

The Commission's majority opinion contended that selective objectors made essentially political decisions; whereas, objectors to all wars were religiously motivated and had made moral decisions. They also asked how the classic Christian doctrine could be offered as a legal norm since it was interpreted in different ways by different Christian denominations. The major objection influencing the vote to retain the traditional objector statute was that legal recognition of selective service objection would disrupt the fabric of society and weaken the morale and effectiveness of the armed forces. After allowing objection to a particular war, they said, there would be nothing to prevent further conscientious objection to other provisions of the state government, e.g., the payment of particular taxes. Really, the majority added, the practical effect of asking the individual to make the distinction between the justice or injustice of a particular war ". . . takes away the Government's obligation of making it for him."⁷

This last phrase of the Commission report is unfortunate. Critics of the report have distorted the majority's intent when they read into an emphasis on the Government's obligation to declare war the Commission's complete submission to the status and military point of view. In its concern for the order and security of society, the Commission, it is true, gave the impression it denied personal responsibility for questions of peace and war. But it is not inconsistent with the conviction that selective conscientious objection is morally right and should be granted exemption status by the Government to recognize the Commission's legitimate concern.

That concern gives the Government a priority in determining policies. The argument for selective objection on the grounds of religious

liberty could be recognized by the Government, but the moral right, unassailable as it might be, is not absolute. Actions by the Government which restrict the rights of individuals and communities for the public welfare, e.g., purchasing of properties for the passage of highways, are common knowledge. Less known, perhaps, are Governmental restrictions of religious claims, e.g., the practice of polygamy by Mormons. Laws are concerned with the common good and the immediate responsibility for the administration and adjustment of laws belongs to elected officials of the Government. It is easy for me to determine the justice of my claim against a negligent debtor. But in matters affecting the good of the whole society my claim is not independent. Rather, the issue is over something I share with many others. Only persons with the responsibility for the good of all men in society can determine the justice of claims affecting the common good.⁸

Decisions on matters affecting the common good take into consideration more than the objective validity of the claim. The draft Commission's concern for the order and security of society, if selective conscientious objection were given legal recognition, is an excellent example illustrating important elements over and above the validity of the claim. Impressed by the emotional loyalty of counterpeace demonstrators, one might question the inevitable weakening of patriotism following the legal recognition of selective conscientious objection, but one could not charge irresponsibility to someone who raises the question of such an effect. The objections of the draft Commission's majority are serious, responsible arguments against a proposal forecasting significant innovations for society if adopted. Advocates of selective conscientious objection must refine their arguments and answer the objections proposed by the draft Commission's majority which are the hesitations of most citizens when faced with the question of selective objection.

No doubt, it will be a while before the draft law will be proposed again for revision. In the meantime, the law must be obeyed or punishment under its statutes accepted. The only other alternative is flight from the country. Sympathizers of young men whose consciences are troubled by the legal alternatives to selective objection can begin now to advocate new legislation which would protect the freedom of conscience of those who object to particular wars. In addition, a program of education should begin so that all citizens, but especially the young in the course of their religious instruction, should be given a better understanding of the issues surrounding questions of peace





and war. Part of this instruction program should include an outline of selective conscientious objection as a practical moral alternative to killing.

Besides persuading reasonable opponents of the exemption for objectors to particular wars, an intelligent lobby would insure equitable administration of the exemption if incorporated into the draft law. An obvious question to advocates as well as opponents of the revision concerns the test for sincerity of belief. An elaborate format is now in use to test the sincerity of pacifist belief. No less a test would be required if selective objection were granted a legal exemption. Administrators of the "Selective Service Act" have already been accused of wielding the draft as a punitive measure against war protesters. Anticipating administrative procedures would guarantee equity.

Revision of the draft law to include exemptions for selective conscientious objectors is an important task for Catholics. It has not gone unnoticed that the Bishops of this country declared segregation a moral question years after the Supreme Court proclaimed school segregation illegal. Can we be silent now on a national issue of great moral concern which finds support in our own moral teachings and the pronouncements of the Council?

The Council made the Catholic more sensitive to the role of conscience in social and political decisions as well as in personal commitments. It also made an ardent plea that men search out the structures of peace. The question of selective conscientious objection offers American Catholics a goal, in the words of John F. Kennedy, as grand as peace: "War will exist until that distant day when the conscientious objector enjoys the same reputation and prestige that the warrior does today."⁹

FOOTNOTES

¹ This brief historical survey is taken from the background of paragraph 6(j) of the United States vs. Seeger case which is reprinted in full in *Psychoanalysis, Psychiatry, and the Law*, edited by Jay Katz, Joseph Goldstein, and Alan M. Deishowitz. New York: Free Press, 1967. pp. 7-8.

² *Ibid.*, p. 8.

³ *Ibid.*, p. 6.

⁴ The Second Vatican Council, "The Pastoral Constitution on the Church in the Modern World," from: *The Documents of Vatican II*, Walter M. Abbott, S.J., editor. New York: The America Press, 1966. p. 292.

⁵ Peter J. Riga, "Catholic Pacifism," from: *The Proceedings of the Catholic Theological Society of America*, Vol. 21, 1966. p. 165.

⁶ *The Report of the National Advisory Commission on Selective Service*. Washington, D.C.: U.S. Government Printing Office, 1967. pp. 48-49.

⁷ *Ibid.*, p. 51.

⁸ Josef Pieper, *Justice*. New York: Pantheon Books, Inc., 1955. p. 65.

⁹ Arthur Schlesinger, Jr. *A Thousand Days*, pp. 88-89.